

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BRADLEY J. QUINN, JR.,

Plaintiff,

vs.

WALLA WALLA COUNTY JAIL
CAPTAIN, JOHN DOES 1-3, and
JANE DOE,

Defendants.

NO. CV-10-5039-CI

ORDER ADOPTING REPORT AND
RECOMMENDATION AND DISMISSING
FIRST AMENDED COMPLAINTS FOR
FAILURE TO EXHAUST ADMINISTRATIVE
REMEDIES

1915(g)

Magistrate Judge Imbrogno filed a Report and Recommendation on August 26, 2010, recommending Mr. Quinn's two "First Amended Complaints" be dismissed for failure to exhaust administrative remedies, and that such dismissal count as one under 28 U.S.C. § 1915(g). See *Jones v. Bock*, 549 U.S. 199, 216, 127 S.Ct. 910, 921 (2007), citing with approval, *Leveto v. Lapina*, 258 F.3d 156, 161 (3rd Cir. 2001) ("[A] complaint may be subject to dismissal under Rule 12(b)(6) when an affirmative defense ... appears on its face" (internal quotation marks omitted)). See also *Wyatt v. Terhune*, 315 F.3d 1108 (9th Cir. 2003) (indicating that *sua sponte* dismissal may be appropriate where the record is clear that prisoner conceded nonexhaustion). Plaintiff

1 admitted of the face of his First Amended Complaints that he has not
2 exhausted his administrative remedies. There being no objections, the
3 court **ADOPTS** the Report and Recommendation.

4 For the reasons set forth above and in the Report and
5 Recommendation, **IT IS ORDERED** the First Amended Complaints (Ct. Recs. 12
6 & 15) are **DISMISSED WITHOUT PREJUDICE** for failure to state a claim upon
7 which relief may be granted due to Plaintiff's failure to exhaust
8 administrative remedies.

9 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner
10 who brings three or more civil actions or appeals which are dismissed as
11 frivolous or for failure to state a claim will be precluded from
12 bringing any other civil action or appeal *in forma pauperis* "unless the
13 prisoner is under imminent danger of serious physical injury." 28
14 U.S.C. § 1915(g). Plaintiff is advised to read the new statutory
15 provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff's
16 complaint may count as one of the three dismissals allowed by 28 U.S.C.
17 § 1915(g) and may adversely affect his ability to file future claims.

18 **IT IS SO ORDERED.** The District Court Executive is directed to
19 enter this Order, enter judgment, forward copies to Plaintiff at his
20 last known address, and close the file. The District Court Executive is
21 further directed to forward a copy of this Order to the Office of the
22 Attorney General of Washington, Criminal Justice Division. The court
23 certifies any appeal of this dismissal would not be taken in good faith.

24 **DATED** this 17th day of September 2010.

25
26 S/ Edward F. Shea
27 EDWARD F. SHEA
UNITED STATES DISTRICT JUDGE